

NATIONAL RAILWAY EQUIPMENT CO.



HOME OFFICE: 14400 S ROBEY STREET P O BOX 2270 · DIXMOOR, ILLINOIS 60426
TELEPHONE (708) 388-6002 FAX (708) 388-2487

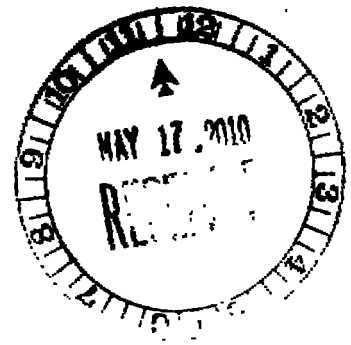
May 14, 2010

Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

RECORDATION NO. 29294 FILED

MAY 17 '10 -3 10 PM

SURFACE TRANSPORTATION BOARD



Attn: Equipment Recordation

To Whom It May Concern:

I have enclosed for recordation, pursuant to the provisions of 49 U.S.C. 11301, an original and one counterpart of the Locomotive Lease Agreement, as well as a memorandum of lease agreement and a schedule, all of which is dated March 11, 2010, a primary document under the Board's recordation regulations.

The names and addresses of the parties to the enclosed document are as follows:

Lessor: National Railway Equipment Co.
14400 S. Robey St.
Dixmoor, IL 60426

Lessee: Rain CII Carbon LLC
12187 East 950th Avenue
Robinson, IL 62454

A description of the equipment covered by the Lease Agreement is as follows:

One General Electric B23-7 Four Axle General Purpose Locomotive bearing the road number NREX 4272.

Also enclosed is a check in the amount of \$41.00 payable to the Surface Transportation Board to cover the required recordation fee for the attached agreement.

Please date-stamp and return an original copy after recordation to:

Andrew S. Whiting
National Railway Equipment Co.
14400 South Robey Street
P.O. Box 2270
Dixmoor, IL 60426

Sincerely,

NATIONAL RAILWAY EQUIPMENT CO.

By: 

Andrew S. Whiting

MAY 17 '10 -3 10 PM

LOCOMOTIVE LEASE AGREEMENT**SURFACE TRANSPORTATION BOARD**

THIS LOCOMOTIVE LEASE AGREEMENT ("Lease"), entered into as of this 11th day of March 2010, between the National Railway Equipment Co., an Illinois corporation, ("LESSOR"), and Rain CII Carbon LLC, a Louisiana limited liability company ("LESSEE").

LESSOR AND LESSEE HEREBY AGREE AS FOLLOWS:**1. LEASE AND LEASED PROPERTY**

Lessee hereby leases from Lessor, the locomotive, together with the parts, accessories, attachments and devices, if any, now or hereafter affixed thereto, as described in Schedule "A" attached to and made part hereof (the "Locomotive").

2. TERM

The term of this Lease for the Locomotive shall be the fixed term set forth in Schedule "A", commencing on the date the Locomotive is delivered to Lessee ("Commencement Date"). Upon termination of this lease, Lessee shall affect prompt delivery of the Locomotive to Lessor at its Silvis, Illinois manufacturing facility.

3. RENTAL

A. The rental payable shall be the sum identified in Schedule "A" payable in monthly installments on the first (1st) day of each month, with one month's advance rent payable upon purchase order receipt date and, in addition, two month's rent payable upon purchase order receipt date to be held as a security deposit. Upon expiration or other termination of this Lease, the security deposit, less any amounts to then due Lessor hereunder, shall promptly be returned to Lessee. Lessee shall operate the Locomotive in service only on its railroad. If the Commencement Date for any locomotive does not fall on the first day of the month, the first rental payment shall be prorated accordingly.

B. Payments past due for more than five (5) days shall bear interest at the rate of twelve percent (12%) per annum

C. All rentals shall be paid to Lessor at:

National Railway Equipment Co.
1473 Paysphere Circle
Department 1473
Chicago, IL 60674

or at such other address as Lessor may direct in writing.

4. TAXES

Lessee shall pay all use, excise, ad valorem, stamp, documentary and similar taxes on or relating to this lease of the Locomotive, or the use, registration, rental, maintenance, possession or operation thereof by Lessee, and shall file any returns required therefore, and shall hold Lessor harmless against any liability and expense (including attorney fees and costs) on account of Lessee's failure to do the same.

5. OWNERSHIP AND LESSOR'S INSPECTION

A. The Locomotive shall at all times remain the sole and exclusive property of the Lessor.

B. Upon reasonable notice to Lessee, Lessor or its agents shall have free access to the Locomotive at reasonable times for the purpose of inspections.

C. No accessions, additions, alterations or improvements to the Locomotive of any nature shall be made without Lessor's consent, but if any are made, they immediately shall become part of the Locomotive and shall become Lessor's property in the event Lessee does not remove such additions, alterations or improvements upon termination of this Lease, provided that Lessee shall restore the Locomotive to its delivery condition (ordinary wear and tear excepted).

D. Lessor shall keep the Locomotive, at all times, free and clear from all claims, liens and encumbrances.

E. This Lease is intended to be a true lease of the Locomotive and is not and in no way shall be construed as creating a sale of the Locomotive to Lessee.

6. DELIVERY RETURN

Lessee shall accept delivery of the Locomotive at Lessor's Silvis, Illinois manufacturing facility ("Delivery Location"). Except as set forth in the Lease, upon expiration or other termination of this Lease, Lessee shall return the Locomotive to Lessor at Silvis, Illinois in good order and condition, reasonable wear and tear excepted. Lessee shall bear freight return costs. Lessee shall pay or reimburse Lessor for any reasonable and ordinary expenses incurred by Lessor in returning the Locomotive to good order and condition, reasonable wear and tear excepted, in delivering the Locomotive to Lessor or effecting return of the Locomotive from Lessee as provided herein. All obligations of Lessee under this Lease shall continue with respect to the Locomotive if not returned by the expiration or earlier termination as permitted herein until the Locomotive is returned to the Delivery Location in accordance herewith including, without limitation, the obligation to pay rent which

shall increase to \$250.00 dollars per day for the first 45 days the locomotive is late and to 150% of such rate thereafter. Shipment cost and risk of loss during ship shall be Lessee's responsibility.

7. WARRANTY DISCLAIMER

Subject to this Section 7, Lessee hereby acknowledges that Lessee has had or will have the opportunity to inspect the locomotive prior to accepting delivery of same, and that acceptance of delivery of the locomotive by Lessee constitutes acknowledgement that they have been received in good condition and repair.

Notwithstanding any provision of this Lease to the contrary, at any time within thirty (30) days from the Commencement Date, Lessee may terminate this Lease and its obligations hereunder in the event the Locomotive and its performance are not acceptable to Lessee in its reasonable discretion. Any such termination shall be effected by providing written notice to Lessor within such thirty (30) day period. In such event, (i) the Locomotive shall be promptly returned to Lessor by Lessee and (ii) rental shall be payable to Lessor at the rate set forth above until the Locomotive is returned to Lessor in the same condition as delivered to Lessee (ordinary wear and tear excepted).

LESSOR MAKES NO REPRESENTATION OR WARRANTY EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE LOCOMOTIVE and Lessor hereby disclaims all such representation and warranties. LESSOR SHALL NOT BE RESPONSIBLE FOR ANY CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES.

8. USE AND MAINTENANCE

Lessee agrees that during the term of this Lease and for any the following that arose during the Lease:

A. Lessee shall be responsible and pay for all registrations, certificates, and permits, and all other similar requirements of governmental authorities required to be obtained in the name of the Lessee.

B. The Locomotive shall be used and operated only by properly qualified, trained and registered personnel authorized by Lessee.

C. Lessee shall comply with all federal, state, municipal and local laws, ordinances, and rules, and regulations relating to the lease, possession, use and operation of the Locomotive.

D. Lessee shall be solely responsible for the payment of any and all fines, penalties or forfeitures (including without limitation the confiscation of the Locomotive levied upon or arising out of the use, operation or maintenance of the Locomotive in violation of any law, ordinance, rule or regulation of any

governmental authority.

E. Lessee shall pay all costs, expenses and charges for the consumables used in connection with the maintenance, use and operation of the Locomotive including sand, water, fuel, oil, all locomotive fluids, wheels and brake shoes. Lessor shall be responsible for the normal FRA inspections and other locomotive repairs and parts not caused by damage, misuse, improper operation of the Locomotive, theft, vandalism or Acts of God. Locomotive hours exceeding 3,500 annually will be billed at \$13.50 per hour for each hour in excess of this annual allotment.

F. Subject to the Lessor's obligations in Section 8(E), Lessee shall maintain the Locomotive in good mechanical condition and running order and in compliance with OEM specifications and safety rules and regulations now or hereafter promulgated by applicable governmental authorities.

G. Lessee shall keep and maintain any and all books and records and make any filings required by any governmental authority with respect to the possession, lease, use or operation of the Locomotive.

H. In the event the Locomotive should be out of service at any time during the term of this Lease for more than 48 hours, (except for a total loss in accordance with Section 9, below) Lessor shall at its sole cost and expense provide Lessee with an equivalent replacement unit for use until the Locomotive is returned to service at Lessee's facility, provided that Lessee shall reimburse Lessor for all reasonable transportation expenses related to the arrival and departure of the replacement unit.

9. INSURANCE / INDEMNIFICATION

A. Liability insurance providing coverage for the property and liabilities associated with this Lease, the Locomotive and Lessee's use of the Locomotive in an amount not less than two million five hundred thousand (\$2,500,000) dollars combined single limit per occurrence shall be provided by Lessee at Lessee's sole expense throughout the term of this Lease. The insurance policy or policies providing the foregoing coverage shall:

- i. be written by an insurance company or companies satisfactory to Lessor and authorized to transact business in all of the states in which the Locomotive will be used and operated.

- ii. name Lessor as an additional insured, but only to the extent of obligations assumed by Lessee under this Lease.

- iii. protect the interests of Lessor and Lessee, including Lessee's authorized operators, with respect to liability for injuries to or the death of third party persons and damage to or loss of use of property of third persons resulting from the ownership, maintenance, use or operation of

the Locomotive.

iv. provide by endorsement or otherwise that the coverage shall be primary coverage as to Lessor, but only to the extent of obligations assumed by Lessee under this Lease.

v. provide that the insurance company or companies issuing such policy or policies shall notify Lessor of any cancellation thereof at least thirty-(30) days prior thereto.

B. Lessee, at Lessee's sole expense, shall provide property damage insurance on the Locomotive. The insurance policy or policies providing the foregoing coverages shall:

i. is written in standard form by an insurance company acceptable to Lessor.

ii. provide coverage in an amount not less than the replacement value of the Locomotive.

iii. provide for losses to be payable to Lessor and Lessee as their respective interests may appear.

C. Notwithstanding any provision of this Agreement to the contrary, (i) Lessee's insurance obligations with respect to the Locomotive shall apply only during such time that the Locomotive is located on Lessee's property, and (ii) while the Locomotive is being transported to and from Lessee's property, whether upon the commencement or termination of this Lease or at any other time, Lessor shall maintain all such insurances. Upon Lessor's request, Lessee shall promptly reimburse Lessor for the reasonable and documented cost of such insurance procured by Lessor.

D. Lessee shall furnish Lessor with a certificate(s) of insurance or other evidence of said insurance coverage.

E. Notwithstanding that Lessee shall provide certain insurance hereunder and irrespective of any responsibility for negligence, Lessee does hereby agree to defend, indemnify, protect and hold harmless Lessor and any assignees or successors of Lessor, and their respective employees and agents, from and against any and all losses, liabilities (including without limitation strict liability imposed by law), damages, injuries, claims, demands and expenses (including legal expenses) of whatsoever kind and nature: resulting from or arising out of the use, condition, operation or ownership of any Locomotive by Lessee during the term of this Lease, except to the extent such damage, injury, claim, demand expense arises from the negligence or other fault of Lessor. This covenant of indemnity shall continue in full force and effect notwithstanding the termination of this Lease.

F. Lessee assumes and agrees to indemnify, protect and hold free and harmless Lessor, any assignee or successor of Lessor, and their respective employees or agents, irrespective of any responsibility for negligence, from any loss, damage, theft or destruction of any locomotive during the term of this Lease, except to the extent such loss, damage, theft or destruction arises from the negligence or other fault of Lessor. In the event of damage to a Locomotive during the term of this Lease and until the Locomotive is returned to Lessor, Lessee shall promptly place the same in good repair (ordinary wear and tear excepted). If Lessee, in the exercise of its reasonable judgment, determines that the Locomotive is lost, stolen, destroyed, damaged beyond repair or rendered permanently unfit for use for any reason, or in the event of condemnation or seizure of the Locomotive, Lessee shall (at Lessee's option) (i) replace such locomotive with substantially similar equipment of equal or greater value and in good repair and transfer title thereto to Lessor free and clear of any all liens, claims and encumbrances of any kind or nature whatsoever, or (ii) pay Lessor in cash the Replacement Value of the Locomotive determined in accordance with Schedule A. Upon payment of such amount to Lessor, the Locomotive shall become the property of Lessee, Lessor will transfer to Lessee, without recourse or warranty, all of Lessor's right, title and interest therein and rent with respect to the Locomotive shall terminate. Lessee shall pay any sales and use taxes due on such transfer.

G. If Lessee shall fail to obtain or maintain the insurance coverage required in this lease, or shall fail to furnish Lessor with evidence thereof after Lessor's written request, Lessor at its option, may obtain such required insurance coverage on behalf of Lessee and Lessee's expense.

10. ASSIGNMENT. EXCEPT AS SET FORTH HEREIN, WITHOUT LESSOR'S PRIOR WRITTEN CONSENT, LESSEE WILL NOT SELL, ASSIGN, SUBLET OR OTHERWISE ENCUMBER OR PERMIT A LIEN ARISING THROUGH LESSEE TO EXIST ON OR AGAINST ANY INTEREST IN THIS LEASE OR THE LOCOMOTIVES. Lessor may assign its interest in this Lease and sell or grant a security interest in all or any part of this Lease or the Locomotive without notice to or the consent of Lessee. Lessee may grant a security interest in all or any part of Lessee's interest in this Lease to an institutional lender without notice to or the consent of Lessor. Lessee agrees not to assert against any assignee of Lessor any claim or defense Lessee may have against Lessor, it being understood that in the event of a default or breach by Lessor, Lessee shall pursue any rights on account thereof solely against Lessor. Lessor and Lessee further agree that no such assignment shall change Lessee's or Lessor's duties or obligations under this Lease or increase such party's risks or burdens, all of which shall remain as set forth herein. Each party to this Lease acknowledges notice of and consents in all respects to, the terms of this Lease. In addition, each of the parties hereto shall have the right to assign this Lease as part of the sale of all or substantially all such party's assets or a corporate merger or consolidation involving such party, provided that party that Lessee assigns the Lease to has a net worth no less than Lessee's net worth existing at the time of the execution and delivery of this Lease.

11. RENEWAL OPTION

[intentionally omitted].

12. FINANCIAL DATA

[intentionally omitted].

13. DEFAULT

A. Lessee shall be in default under this Lease upon the happening of any of the following events or conditions ("Event of Default"):

- i. Default in the payment when due of any installment of rental hereunder or of any other obligation for the payment of money now or hereafter owed by Lessee to Lessor if such default continues for ten (10) days following written notice of such breach by Lessee.
- ii. Default in the timely performance of any other liability, obligation, covenant or agreement hereunder of Lessee if such default continues for thirty (30) days following written notice of such breach by Lessee.

14. REMEDIES UPON DEFAULT

A. Upon the occurrence of any Event of Default or at any time hereafter, Lessor, in its sole discretion, may take anyone or more of the following actions with respect to the Locomotive:

- i. Declare all unpaid lease payments to be immediately due and payable.
- ii. Terminate this Lease by written notice to Lessee.
- iii. Whether or not the Lease is terminated, take possession of the Locomotive wherever found, and for this purpose Lessor may at Lessor's option enter upon the premises where the Locomotive is located and take immediate possession of and remove the same.
- iv. Termination of this Lease does not terminate, limit, or restrict the rights and remedies of Lessor, except as limited by applicable law. In addition to Lessor's right under common law to redress for any breach or violation, Lessee shall indemnify and defend Lessor against all losses, damages, cost and expenses (including, without limitation, interest, penalties, court costs, and attorney's fees and expenses) asserted against, imposed upon, or incurred by Lessor arising out of or resulting from any breach or violation.

- v. Require that Lessee shall, upon demand by Lessor and at Lessee's expense, promptly make available to Lessor at Lessee's expense, the Locomotives at a place designated by Lessor which is reasonably convenient to both parties.
- vi. Proceed by appropriate action either at law or in equity to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof.
- vii. Exercise any and all rights and remedies available to Lessor under any applicable law.

B. None of the rights and remedies under or referred to is intended to be exclusive, but each such right or remedy shall as to each locomotive be cumulative and may be availed of separately or concurrently with or in addition to any other right or remedy provided or referred to herein or otherwise available to Lessor at law or in equity. Any repossession or subsequent sale or lease by Lessor of the Locomotive shall not bar an action against Lessee for a deficiency to the extent such a deficiency is permitted by applicable law.

C. Without limitation of any rights of Lessor otherwise existing or otherwise available to Lessor, it is expressly covenanted and agreed by the parties hereto that in the event of any assignment by operation of law of this Lease, or of a bankruptcy of Lessee within the meaning of the Federal Bankruptcy Act, then Lessor may, at Lessor's election, terminate this Lease.

15. RECORDATION OF LESSOR'S INTEREST

Lessee agrees to execute all recording documents reasonably requested by Lessor to show Lessor's interest in the Locomotive. Lessee further authorizes Lessor to execute and file financial statements or other documents evidencing Lessor's interest in the Locomotive without Lessee's signature.

16. MISCELLANEOUS

- A. This Lease and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of Illinois. Illinois shall be choice of forum for all litigation.
- B. Neither this Lease nor any schedule shall be amended, and no provision hereof or of any Schedule shall be waived or varied unless by writing signed by the parties.
- C. No delay or omission by Lessor in exercising any right hereunder shall operate as a waiver of such right or any other right. A waiver by Lessor of

any Event of Default by Lessee shall not be construed as a waiver of any future occasion.

- D. In case any provision (or portions thereof) in this Lease shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions (or portions thereof) hereby shall not in any way be affected or impaired thereby.
- E. This Lease shall be binding upon and inure to the benefit of Lessor and Lessee and their respective successors.
- F. All notices permitted or required to be given pursuant to this Lease shall be mailed by Certified or Registered Mail, Return Receipt Requested to the parties at the following addresses or at such other addresses as each party may notify each other.

If to Lessor: National Railway Equipment Co.
14400 South Robey Street
Dixmoor, Illinois 60426

If to Lessee: Rain CII Carbon LLC
12187 East 950th Avenue
Robinson, Illinois 62454

With a copy to:

Rain CII Carbon LLC
2627 Chestnut Ridge Drive, Suite 200
Kingwood, TX 77339
Attention: Summer Bartholomew

WITNESS WHEREOF, the parties have executed this Lease the day and year first mentioned above.

LESSOR:

NATIONAL RAILWAY EQUIPMENT CO.

By: 

Name: James M. Wurtz, Jr.

Title: VP Marketing & Sales

LESSEE

RAIN CII CARBON LLC

By: 

Name: Steve Rawnsford

Title: ODD

SCHEDULE "A"

Attached to and incorporated into the Lease dated the 11th day of March 2010, by and between the National Railway Equipment Co. ("LESSOR") and Rain CII Carbon LLC. ("LESSEE").

Type and General Description of Locomotive Unit(s), Marks and Numbers:

<u>Unit No:</u>	<u>Type:</u>	<u>General Description:</u>
NREX 4272	GE	B23-7 Four Axle General Purpose Locomotive

LEASE
TERM

3 Years

COMMENCEMENT DATE: March 8, 2010

LESSOR: NATIONAL RAILWAY EQUIPMENT CO.

By: 

Name: James M. Wurtz, Jr.

Title: VP Marketing & Sales

LESSEE: RAIN CII CARBON LLC

By: 

Name: Steve Randall

Title: COO

MEMORANDUM OF LOCOMOTIVE LEASE AGREEMENT

THIS MEMORANDUM OF LOCOMOTIVE LEASE AGREEMENT has an effective date of March 11, 2010, and is by and between National Railway Equipment Co. ("Lessor"), and Rain CII Carbon LLC ("Lessee"), with reference to the following:

1. Lessor has agreed to lease to Lessee, and Lessee has agreed to lease from Lessor the Locomotive model(s) described herein. This MEMORANDUM OF LEASE AGREEMENT evidences a lease.

Each locomotive is fully-described in a certain Lease Agreement with an effective date of March 11, 2010, (the "Lease"), between Lessor and Lessee. A schedule of the equipment is attached hereto.

2. All terms of the LOCOMOTIVE LEASE AGREEMENT are hereby referred to and incorporated in this memorandum by reference.

The MEMORANDUM OF LOCOMOTIVE LEASE AGREEMENT may be executed counterpart constituting an original but all together only one MEMORANDUM OF LEASE AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed or caused this MEMORANDUM OF LEASE AGREEMENT to be executed as of the date first above written.

LESSEE:

NATIONAL RAILWAY EQUIPMENT CO.

By: 

Name: James M. Wurtz, Jr.

Title: VP Marketing & Sales

LESSOR:

RAIN CII CARBON LLC

By: 

Name: Steve Randall

Title: CEO

STATE OF ILLINOIS

COUNTY OF COOK

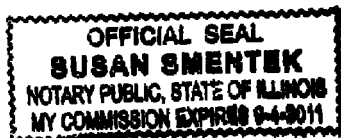
)
) SS.
)

On this 11th day of March 2010, before me appeared James M. Wurtz, Jr., the person who signed this instrument who acknowledged that (s) he is the VP-Marketing & Sales of NATIONAL RAILWAY EQUIPMENT CO. and that, being duly authorized, (s) he signed such instrument as a free act on behalf of said corporation.

Susan Smentek

Notary Public

[Seal]



My Commission Expires:

9-4-2011

STATE OF TEXAS)

) SS.

COUNTY OF HARRIS)

On this 12th day of March, 2010, before me appeared Steve Richard, the person who signed this instrument who acknowledged that (s) he is an officer of RAIN CII CARBON LLC and that, being duly authorized, (s) he signed such instrument as a free act on behalf of said limited liability company.

Karen J. Williamson

Notary Public

[Seal]



My Commission Expires:

3-26-2012

SCHEDULE OF EQUIPMENT

Lessor: NATIONAL RAILWAY EQUIPMENT CO.

Lessee: RAIN CII CARBON LLC

Approved by: *John D. Smith*
(Lessee to initial each page)

Equipment Schedule No.: See Schedule "A"

Type and General Description of Locomotive Unit(s), Marks and Numbers:

<u>Unit No:</u>	<u>Type:</u>	<u>General Description:</u>
NREX 4272	GE	B23-7 Four Axle General Purpose Locomotive